

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Viasat, Inc.	)	IBFS File No. SAT-MOD-20210825-00110
	)	Call Sign S2917
Application for Extension or Waiver of Milestone	)	
Date	)	

**ORDER**

**Adopted: December 23, 2021**

**Released: December 23, 2021**

By the Chief, International Bureau:

**I. INTRODUCTION**

1. By this Order (Order), we grant the request of Viasat, Inc. (Viasat) to modify the milestone for launching and beginning to operate the VIASAT-3 satellite, which is planned to provide fixed-satellite services (FSS) at the 88.9° W.L. orbital location.<sup>1</sup> Specifically, we modify the milestone by extending it from the current date, December 31, 2021, to October 31, 2022. This action is taken based on a finding that the additional time needed by Viasat to launch and operate is due to unforeseeable circumstances beyond Viasat's control, specifically delays due to the COVID-19 pandemic. Grant of this request for a ten-month extension will allow Viasat to complete a nearly finished manufacturing phase and to launch the VIASAT-3 satellite that will provide broadband connectivity to customers in rural and urban areas of the United States, as well as to aircraft and ships, and enhanced services for U.S. military and government customers.

**II. BACKGROUND**

2. On June 18, 2014, the Satellite Division granted Viasat access to the United States market to provide FSS in the 19.7-20.2 GHz (space-to-Earth) and 29.5-30.0 GHz (Earth-to-space) bands, as well as the 18.3-19.3 GHz (space-to-Earth) and 28.1-29.1 GHz (Earth-to-space) bands,<sup>2</sup> via the proposed VIASAT-3 satellite, to be operated at the 88.9° W.L. orbital location.<sup>3</sup> The Commission's rules and the conditions of the grant required that Viasat launch and begin operations of VIASAT-3 by June 18, 2019.<sup>4</sup>

<sup>1</sup> See Request to Extend or Waive Milestone Date, IBFS File No. SAT-MOD-20210825-00110 (*Milestone Request*).

<sup>2</sup> IBFS File Nos. SAT-LOI-20140204-00013; SAT-AMD-20140218-00023 (grant stamp, dated June 18, 2014). Viasat was also subsequently granted a modification of the terms of market access for VIASAT-3 to change the center frequencies used for telemetry, tracking, and command operations and to reflect other revised technical parameters of the VIASAT-3 satellite under contract for construction. See IBFS File No. SAT-MOD-20150618-00037 (grant stamp, dated Oct. 21, 2015).

<sup>3</sup> This satellite was originally to be called VIASAT KA-89W, but the name was subsequently changed to VIASAT-3. See IBFS File No. SAT-MOD-20150618-00037 (grant stamp, dated Oct. 21, 2015).

<sup>4</sup> 47 CFR §§ 25.137(d) and 25.164(a); IBFS File No. SAT-LOI-20140204-00013, condition 12 (grant stamp, dated June 18, 2014). The Satellite Division subsequently re-issued the market access grant for VIASAT-3 on March 23, (continued....)

3. On June 17, 2019, Viasat filed a request to modify the terms of the VIASAT-3 grant, noting that delays related to construction of radio-frequency payload necessitated additional time to complete construction.<sup>5</sup> Viasat noted that it had expended over 80 percent of the total cost of developing and manufacturing the VIASAT-3 satellite and that the satellite bus was in advanced integration and testing stages.<sup>6</sup> In granting the extension, we concluded that “there are unique and overriding public interest considerations that warrant grant of Viasat’s request,” and that there was no basis for concluding that Viasat was unwilling or unable to proceed with completion of the satellite.<sup>7</sup> We concluded that Viasat had demonstrated a substantial and continuing commitment towards completion and system implementation, that it was working diligently to overcome construction delays, and that there was no basis to inquire further as to whether the delays were a foreseeable outcome of Viasat’s decision to alter its satellite design.<sup>8</sup> Additionally, we noted that Viasat’s voluntary proposal to increase its milestone bond was consistent with and supportive of the Commission’s policy of using a market-based approach toward ensuring that licensees complete construction and not warehouse scarce resources.<sup>9</sup> The request was granted and, among other modifications authorized, the milestone for launching and beginning operations was extended until December 31, 2021.<sup>10</sup>

4. On August 25, 2021, Viasat filed the present request to extend or waive the launch and begin operations milestone until October 31, 2022. Viasat’s request was accepted for filing and placed on public notice,<sup>11</sup> and no comments were filed in response.

### III. DISCUSSION

5. Milestone extensions may be granted when the delay in meeting the milestone is due to unforeseeable circumstances beyond the applicant’s control, or when there are unique and overriding public interest concerns that justify an extension.<sup>12</sup> Additionally, an applicant must justify the precise extension period requested.<sup>13</sup> In its request, Viasat states that it has expended approximately 89 percent of the total construction costs and expects this number to increase to 93 percent by the end of 2021, and that it has secured a launch slot, expended more than 70 percent of launch-related costs, and made significant progress towards deploying the necessary ground infrastructure.<sup>14</sup> With respect to the progress on the ground infrastructure, Viasat reports that it has completed two telemetry, tracking, and control

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2017, to incorporate revised milestone and associated performance bond provisions that were adopted by the Commission in 2015. *See Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd 14713 (2015) (*Part 25 Streamlining Second Report and Order*).

<sup>5</sup> *See Application for Modification of Market Access Grant and for Extension or Waiver of Milestone Date*, SAT-MOD-20190617-00047, granted on May 28, 2020. Viasat, Inc., 35 FCC Rcd 5416, para. 6 (Int’l. Bur. and OET 2020) (*2020 Extension Grant*).

<sup>6</sup> *See* IBFS File No. SAT-MOD-20190617, Narrative at 8.

<sup>7</sup> *See 2020 Extension Grant*, 35 FCC Rcd at 5420, para. 11.

<sup>8</sup> *Id.* at 35 FCC Rcd at 5420, paras 9, 11.

<sup>9</sup> *Id.* at 35 FCC Rcd at 5420, para 10.

<sup>10</sup> Contemporaneously, Viasat was granted additional authority with respect to certain frequencies on the VIASAT-3 satellite. *See* IBFS File No. SAT-LOA-20190617-00048.

<sup>11</sup> *Satellite Policy Branch Information: Space Station Applications Accepted for Filing*, Public Notice, Report No. SAT-01577 (Sep. 10, 2021).

<sup>12</sup> 47 CFR § 25.117(e).

<sup>13</sup> *Id.*

<sup>14</sup> *Milestone Request*, Narrative at 1.

sites, and made “very significant progress” regarding the deployment of satellite access nodes (SANs) by conducting extensive engineering work and having completed terrestrial coordination for “almost all” SANs locations that will be used once VIASAT-3 is brought into service.<sup>15</sup> Viasat states that the COVID-19 pandemic, however, has resulted in supply chain and human resource disruptions, and consequent construction and delivery delays beyond Viasat’s control,<sup>16</sup> making the December 31, 2021 launch and operation milestone deadline unattainable.<sup>17</sup> Viasat also contends that although it has completed construction of the VIASAT-3 radio-frequency module and delivered it to Boeing for integration into the satellite bus, COVID-related disruptions have affected Boeing’s ability to complete integration in a timely fashion.<sup>18</sup>

6. The COVID-19 pandemic, as the Commission has acknowledged, is a unique and unusual circumstance that has resulted in “widespread delays in the receipt of communications equipment” and has caused delays in network construction.<sup>19</sup> The Commission has noted that COVID-19 delays differ from, for example, natural disaster delays in that COVID-19 delays are more ubiquitous whereas natural disaster delays are more discrete, and that various stay-at-home orders, while necessary for public health and safety, have created “gaps in all phases of the supply and deployment chain.”<sup>20</sup> Therefore, we find Viasat’s statements regarding COVID-19-related delays to be generally credible. Further, the factors that led us to grant the first milestone extension in 2020 are still present here, *e.g.*, Viasat’s representation that VIASAT-3 is at an advanced stage of construction, representations concerning diligent efforts to overcome construction delays, and circumstances indicating that warehousing<sup>21</sup> spectrum is not a concern due to Viasat’s intent and ability to launch and operate VIASAT-3.<sup>22</sup> Given that COVID-19 is the singular new variable, and Viasat has made significant progress toward completion of the project despite the unforeseeable delays associated with COVID-19, we see no reason to reach a different conclusion

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<sup>15</sup> *Id.* at 3-4.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.* 2-3.

<sup>18</sup> *Id.*

<sup>19</sup> See, *e.g.*, *Waiver of FCC Rule Sections 1.946 (c) and (d) for Wireless Site-Based and Mobile-Only System*, 35 FCC Rcd 3536, 3536-3539, paras. 2-5 (WTB, PSHSB 2020) (*Waiver of 1.946*); *Request for Waiver by the Schools, Health & Libraries Broadband (SHLB) Coalition*, Order, DA 21-726, WL 2580086 at paras. 4-7 (*SHLB Coalition*) (WCB June 21, 2021).

<sup>20</sup> *Waiver of 1.946*, 35 FCC Rcd at 3537, paras. 4-5; “[The] the impacts of the virus are still being felt. For example, widespread delays in the receipt of “communications equipment of all kinds, which extends not only to electronics (such as routers, optical network terminals, and customer premises equipment (CPE)) but also fiber” is causing delays in network construction. The impact of the pandemic is causing delays in construction projects across the country.” *SHLB Coalition* at para. 4.

<sup>21</sup> *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd 14713 (2015). As the Commission has elaborated, warehousing refers to the retention of preemptive rights to use spectrum and orbital resources by an entity that “does not intend to bear the cost and risk of constructing, launching, and operating an authorized space station, is not fully committed to doing so, or finds out after accepting the license that it is unable to fulfill the associated obligations.” *Id.* at 30 FCC Rcd at 14735, para. 53.

<sup>22</sup> The previous milestone extension was conditioned on maintenance of an escalating surety bond for VIASAT-3. The escalation of the bond value beyond the regular five-year period is a simple extrapolation of the linear increase, *i.e.*, \$400,000 per year, applicable within the five years. See 47 C.F.R. § 25.165(a)(2) (requiring the posting of a surety bond equal to \$1 million plus an amount per day that escalates to \$2 million over a five-year period, *i.e.*, approximately \$1,100 per day, rounded to the nearest \$10,000). As part of this grant, we modify the conditions of Viasat’s grant to continue the escalation of the bond through October 31, 2022.

regarding the merits of a milestone extension. In light of these factors, grant of an extension will serve the public interest by allowing Viasat to expeditiously complete implementation of its system.

#### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that Viasat Inc's Request to Extend or Waive Milestone Deadline for the VIASAT-3 satellite is GRANTED pursuant to sections 0.51, 0.261, and 25.117(e) of the Commission's Rules, 47 CFR §§ 0.51, 0.261 and 25.117(e).

8. Viasat must maintain a surety bond requiring payment in the event of default as defined in section 25.165(c) of the FCC rules, in an amount, at a minimum, determined according to the following formula, with the resulting dollar amount rounded to the nearest \$10,000:  $A = \$3,000,000 + \$2,000,000 * D / 1827$ , where A is the amount to be paid and D is the lesser of 1230 or the number of days elapsed from June 19, 2019, until the date when the grant is surrendered.

9. Viasat must launch the VIASAT-3 satellite, position it in its assigned orbital location, and operate it in accordance with the grants in Viasat, Inc., 35 FCC Rcd 5416, and in File No. SAT-LOA-20190617-00048, no later than October 31, 2022.

10. This grant will be null and void automatically, without further Commission action if Viasat fails to comply with these requirements. Failure to comply with the milestone requirement will also result in forfeiture of Viasat's surety bond. By November 15, 2022, Viasat must either demonstrate compliance with its milestone requirement or notify the Commission in writing that the requirement was not met. 47 CFR § 25.164(f).

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Sullivan  
Chief, International Bureau